

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT TOBIAS ALVAREZ,

Petitioner,

v.

JIM ROBERTSON,

Respondent.

Case No. [21-cv-04626-HSG](#)

ORDER TO SHOW CAUSE

Petitioner, an inmate at Pelican Bay State Prison, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner has paid the filing fee. Dkt. No. 5.

BACKGROUND

According to the petition, on or about November 22, 2017, Petitioner was sentenced to life without parole, plus an additional fifty-six years, after being convicted by a San Jose County jury of murder and second-degree robbery. Dkt. No. 1 at 2; Dkt. No. 1-1 at 2. The jury also found true a felony murder special circumstance allegation, as well as gang allegations attached to the murder count and to one count of robbery. Dkt. No. 1-1 at 2.

Petitioner unsuccessfully appealed his conviction to the state appellate court, and the California Supreme Court denied his petition for review. Dkt. No. 1 at 3; Dkt. No. 1-1. Petitioner does not report having filed any state habeas petition. Dkt. No. 1 at 3.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in

custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner’s Claims

The petition states the following cognizable claims for federal habeas relief: (1) the trial court erred when it refused to allow into evidence co-defendant Madrigal’s admission to police that he had committed substantial portions of the charged crimes; (2) the trial court erred when it refused to allow cross-examination of Suevannah Mestas regarding co-defendant Madrigal’s admission of guilt; (3) the prosecutor committed misconduct when he argued that Petitioner stabbed the victim; (4) insufficient evidence to support the conviction for robbery of Edward Ng; (5) insufficient evidence to support gang enhancements on the murder and robbery counts; special circumstance conviction should be reversed; (6) Petitioner’s sentence constituted cruel and unusual punishment within the meaning of the Eighth Amendment; and cumulative error. *See generally* Dkt. No. 1. Liberally construed, the claims appear cognizable under § 2254 and merit an answer from Respondent. *See Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe *pro se* petitions for writs of habeas corpus liberally).

CONCLUSION

For the foregoing reasons, the Court orders as follows.

1. The Clerk shall serve electronically a copy of this order upon the Respondent and the Respondent’s attorney, the Attorney General of the State of California, at the following email address: SFAWTParalegals@doj.ca.gov. The petition and the exhibits thereto are available via the Electronic Case Filing System for the Northern District of California. The Clerk shall serve by mail a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **ninety-one (91) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted

1 based on the claims found cognizable herein. Respondent shall file with the answer and serve on
 2 Petitioner a copy of all portions of the state trial record that have been transcribed previously and
 3 that are relevant to a determination of the issues presented by the petition.

4 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
 5 Court and serving it on Respondent within **thirty-five (35) days** of the date the answer is filed.


6 3. Respondent may file, within **ninety-one (91) days**, a motion to dismiss on
 7 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of
 8 the Rules Governing Section 2254 Cases. If Respondent files such a motion, petitioner shall file
 9 with the Court and serve on Respondent an opposition or statement of non-opposition within
 10 **twenty-eight (28) days** of the date the motion is filed, and Respondent shall file with the Court
 11 and serve on Petitioner a reply within **fourteen (14) days** of the date any opposition is filed.

12 4. Petitioner is reminded that all communications with the Court must be served on
 13 Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must
 14 keep the Court informed of any change of address and must comply with the Court's orders in a
 15 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
 16 pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772
 17 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

18 5. Upon a showing of good cause, requests for a reasonable extension of time will be
 19 granted provided they are filed on or before the deadline they seek to extend.

20 **IT IS SO ORDERED.**

21 Dated: August 24, 2021

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 23 HAYWOOD S. GILLIAM, JR.
 24 United States District Judge
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